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6
7 **UNITED STATES BANKRUPTCY COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
9

10 In re:

Chapter 7 Case No. 08-41153 LT

11 JAVED WAHAB,
SSN: xxx-xx-0300

12 Debtor.

13
14 HOWARD B. ALLAN,

15 Plaintiff,

16 vs.

17 JAVED WAHAB,

18 Defendant.

Adv. Proc. No: 08-4128-AT

19 **DECLARATION OF PLAINTIFF HOWARD B. ALLAN**
20 **IN SUPPORT OF REQUEST FOR ENTRY OF DEFAULT JUDGMENT**

21 I, HOWARD B. ALLAN, declare as follows:

22 1. I am the plaintiff in the above-entitled adversary proceeding and make this
23 declaration in support of my application for entry of a default judgment. If called upon to
24 testify in this matter, I could, and would, testify to the same from my own personal knowledge,
25 except for those matters, which are based on my personal information, and belief, which I
26 believe to be true.

27 2. In December 2000, Michael P. Murphy and I formed a business known as A&M
28 Automotive Investments, Inc., a corporation formed for the purpose of selling and servicing

1 Mitsubishi vehicles. This entity owned and operated a Mitsubishi dealership under the name
2 of Hayward Mitsubishi in Hayward, California.

3 3. In early 2003, Debtor/Defendant Javed Wahab (herein "Wahab" or "defendant")
4 was hired by A&M Automotive Investments, Inc. as the General Manager of Hayward
5 Mitsubishi. Soon thereafter, defendant Wahab expressed a desire to purchase the business.
6 Over the course of 2003, numerous discussions were had among Mr. Murphy, defendant
7 Wahab, and me concerning potential scenarios under which defendant Wahab might
8 purchase the business.

9 4. After extensive negotiations, Mr. Murphy and I agreed to sell the corporation
10 and its interest in the dealership to defendant Wahab. Wahab brought on board two partners,
11 Zulfigar ("Ali") Shiraze ("Shiraze") and Mustafa Akbar ("Akbar"). In January 2004, the parties
12 entered into an agreement for the purchase and sale of A&M Automotive Investments, Inc.
13 The agreement called for defendant and his partners to purchase the corporation in
14 exchange for a cash payment. (See **Exhibit A**, a true and correct copy of the Stock Sale and
15 Purchase Agreement.)

16 5. At the close of escrow, defendant and his partners were unable to come up with
17 the full cash purchase price. Because they were short by \$450,000, defendant Wahab and
18 his partners offered to give promissory notes secured by a deed of trust, for the amount of the
19 shortfall.

20 6. Mr. Murphy and I agreed, in lieu of the cash payment required by the Stock
21 Sale and Purchase Agreement, to each accept notes in the amount of \$225,000.00 (for the
22 total shortfall of \$450,000.00), with each note secured by real properties that the respective
23 obligors represented they owned. My agreement to accept the notes in lieu of cash was
24 conditioned on my note (in the amount of \$225,000) being secured by a valid and
25 enforceable deed of trust on the properties of defendant and his two partners. I would not
26 have closed escrow, nor would I have sold the business to defendant, if the security being
27 offered were not, in fact, available to secure my note.

1 7. Both in the course of negotiating the terms of the notes and deed of trust and
2 after execution of the notes and deeds of trust, defendant Wahab represented that, for value
3 received in the form of the Mitsubishi dealership business franchised by A&M Automotive
4 Investments, Inc., he would pay me the principal sum of \$225,000.00 with interest from May
5 1, 2004 at the rate of 10% (ten percent) per annum by May 1, 2007. (See **Exhibit B**, a true
6 and correct copy of the Promissory Note dated April 29, 2004.)

7 8. Defendant Wahab further represented that he would be jointly and severally
8 liable on the note, and that the note would be secured by a deed of trust recorded on the real
9 property of defendant and that of both of his partners. (See **Exhibit B**.) Defendant further
10 represented that he and his partners were authorized to give their properties as security for
11 the obligations in the note, and defendant also represented that each of the three properties
12 was valid security for the obligations in the note and that each property was actually owned
13 by the person giving the property as security. Defendant dealt directly with his partners and
14 coinvestors, Shiraze and Akbar, and in turn represented to me that he had personally
15 arranged to obtain their signatures on the note and deed of trust, and that the notes and deed
16 of trust had been in fact signed (and the deed of trust acknowledged) by Shiraze and Akbar.

17 9. On or about April 29, 2004, defendant Wahab delivered the executed promissory
18 note to me. (See **Exhibit B**.) To secure payment of the principal sum in the amount of
19 \$225,000, together with interest and the other obligations under that note, and as part of the
20 same transaction, defendant Wahab delivered the executed deed of trust naming me as one of
21 the beneficiaries. (See **Exhibit C**, a true and correct copy of the executed Deed of Trust
22 recorded in Alameda County.)

23 10. The deed of trust was recorded on all three properties, including defendant
24 Wahab's property commonly known as 32590 Point Lobos Court, Union City, County of
25 Alameda, California; Mustafa Akbar's property commonly known as 5352 Tacoma Commons,
26 Fremont, County of Alameda, California; and Ali Shiraze's property commonly known as 882
27 Hamilton Drive, Pleasant Hill, County of Contra Costa, California. The deed of trust identifying
28 all three properties was recorded on June 10, 2004, as Instrument No. 2004259643 in the

1 Official Records in the Office of the Recorder, County of Alameda, California. (See **Exhibit C.**)
2 In addition, a counterpart of the subject deed of trust was also recorded on June 10, 2004, as
3 Instrument No. 2004-0221831 in the Official Records in the Office of the Recorder, County of
4 Contra Costa, California. (See **Exhibit D**, a true and correct copy of the Deed of Trust
5 recorded in Contra Costa County.) However, the deed of trust which was to be secured by the
6 Wahab property was not ever picked up in the county records because the legal description was
7 defective.

8 11. When defendant Wahab delivered the fully executed note and deed of trust to me,
9 both documents appeared to have been signed by defendant and his two partners. (See
10 **Exhibits B, C and D.**) The documents bore signatures for all three individual signers. Defendant
11 represented that he and his partners had signed the note and the deed of trust securing the
12 indebtedness. Both the note and the deed of trust delivered by defendant Wahab to me
13 appeared to have been properly signed, and the deed of trust bore the notary stamp and
14 signature of Wahab's spouse, one Lydia M. Wahab, then a Notary Public in the County of
15 Alameda. (See **Exhibits B, C and D.**) I am informed and believe that Lydia M. Wahab is no
16 longer a Notary Public, and my extensive efforts to locate Mrs. Wahab have been
17 unsuccessful thus far. I am informed and believe that Lydia M. Wahab did not return her
18 Notary Book to the county recorder, as required upon expiration of a notary's commission.

19 12. The representations made by defendant Wahab regarding the deeds of trust
20 were, in fact, false. The true facts, which defendant Wahab concealed from me, were that
21 defendant Wahab did not intend to pay me the sum of \$225,000.00 with interest. This is
22 evidenced by the fact that defendant Wahab twice refinanced and conveyed his property without
23 notice to me and without my consent, knowing that he had given me a deed of trust which was
24 to be recorded on and secured by his property. He did nothing to make certain that I was paid
25 from these refinances. (See **Exhibit E**, true and correct copies of two Deeds of Trust executed
26 by defendant, one in favor of Long Beach Mortgage Company, dated 10/1/2004 and the other in
27 favor of Cal State 9 Credit Union, dated 6/22/2005.) This is further evidenced by the fact that
28 defendant Wahab now denies that any debt was ever owed, even though defendant signed the

1 note and deed of trust (see **Exhibit F**, true and correct copies of portions of Recorded
2 Statement of Javed Wahab taken by Richard Bowles, Esq., on 11/19/07, at 12:9-14, 14:16-25),
3 and even though prior to giving the above statement, Wahab confirmed in writing that he owed
4 the amounts set forth in the note. (See **Exhibit G**, Emails between 6/8/06 and 6/14/06 between
5 Wahab and plaintiff Howard “Bud” Allan.)

6 13. Defendant Wahab fraudulently represented that he was giving me a note amply
7 secured by three properties – security that he himself personally arranged to obtain – when the
8 true fact is that he never intended to secure the obligations in the note. This is evidenced by
9 several facts discovered after Wahab’s default on the note, or after I commenced the state court
10 litigation.

11 a. First, as set forth above, defendant Wahab refinanced the property he
12 offered as security, thus encumbering the property further, without notice to me. (See **Exhibit**
13 **E.**) In that process, Wahab gave a deed of trust on the same property given to secure my note
14 to Long Beach Mortgage Company. (See *id.*) Wahab did not ensure that I was paid by these
15 refinances.

16 b. Second, Wahab arranged for his partner, Shiraze, to provide his real
17 property, located at 882 Hamilton Drive in Pleasant Hill, as security for the debt, and
18 represented that Shiraze owned and could give that property as security. The true facts
19 discovered after Wahab defaulted on the note are that Shiraze could not give the property as
20 valid security for the obligations in the note, because the property was owned solely or as
21 community property by Shiraze’s spouse (see **Exhibit H**, a true and correct copy of Grant Deed
22 dated 11/15/2001), who did not consent to the encumbrance.

23 c. Third, Wahab arranged for his other partner, Akbar, to provide his real
24 property, located at 5352 Tacoma Commons in Fremont, as security for the debt and
25 represented that Akbar also owned and could give the property as security. Wahab further
26 represented that Akbar had executed the note and deed of trust giving his property as security.
27 However, the true facts discovered after Wahab defaulted on the note are that Akbar did not
28 actually own the Tacoma Commons property at the time it was conveyed to me in April 2004.

(See **Exhibit I**, a true and correct copy of Grant Deed dated 10/8/2004.) Moreover, according to sworn discovery responses by Akbar (which I have personally read) in state court litigation arising out of the above transactions (Alameda County Superior Court Action No. RG 07345433), Akbar never executed the note or deed of trust, but rather, his name was **forged** on those documents. (See **Exhibit J**, a true and correct copy of Mustafa Akbar's Responses to Special Interrogatories.) As mentioned, Wahab represented he would be responsible for obtaining the signatures and acknowledgments of Shiraze and Akbar, and in fact delivered the documents purportedly properly executed to me. However, as a result of the alleged forgery of Akbar's signature on the note and the deed of trust, it is alleged that the Akbar property is not valid security for the obligations in the note. The alleged forgery of Akbar's note and deed of trust was accomplished despite the fact that the deed of trust purporting to bear Akbar's signature was notarized by defendant's spouse Lydia M. Wahab. (See **Exhibit C**.)

14. Thus, the note and deed of trust given by Wahab to me were procured both by fraud in the inducement and fraud in the execution. Wahab, either acting alone or in concert with Shiraze, Akbar and/or Lydia M. Wahab, defrauded or conspired to defraud me out of the monies owed on the note by falsely representing that valid security was given for the obligations in the note and by falsifying the note and deed of trust, even going to far as to have the deed of trust falsely notarized. All of these actions were done intentionally and fraudulently.

15. When defendant Wahab made the representations set forth herein, he knew them to be false, and he made them with the intent to induce me into accepting the note and deed of trust in lieu of the cash payment called for in the agreement. The above facts make it clear that defendant never intended to pay the note in full, despite his repeated express promises to do so. Further, defendant did not intend to give any valid security for the obligations in the note, again despite express representations to the contrary. Wahab defrauded and/or conspired with Shiraze, Akbar and Lydia M. Wahab to defraud me of the monies owed under the Stock Sale and Purchase Agreement.

16. At the time the representations were made by defendant, and at the time I agreed to accept the note and deed of trust in lieu of cash, I was unaware that these representations

1 were false. In reliance on these representations, I was induced to, and did, accept the note and
2 deed of trust in lieu of the cash payment called for in the agreement. Had I known the actual
3 facts, I never would have consented to accept the note and deed of trust in lieu of cash.

4 17. As a proximate result of defendant's fraud and deceit, I was damaged in the
5 following amounts: the principal balance of \$225,000.00, plus interest of \$63,123.29 (calculated
6 based on the interest rate of 10% per annum from and after the date of default on the note,
7 January 1, 2006, through the date of filing of the request for entry of judgment, October 21,
8 2008), and I was also forced to incur attorneys' fees of \$80,575.35 and costs of \$5,437.58 in my
9 efforts to obtain the sums due under the note, in both state court proceedings and this adversary
10 proceeding. (See **Exhibit K**, Invoices from Adleson, Hess & Kelly, P.C.) I have paid all
11 attorneys' fees charged to me pursuant to the invoices attached, except for the most recent
12 charges incurred during the month of October, which will be paid promptly upon receipt of the
13 October invoice. My attorney has signed a separate declaration concerning the necessity and
14 reasonableness of the fees charged for the work performed. Importantly, the promissory note
15 expressly provides for an award of attorneys' fees in the event of default on the note. (See
16 **Exhibit C**.)

17 18. In doing the acts herein alleged, defendant acted despicably and with the intent to
18 defraud me, and I therefore request an award of punitive damages be assessed by the Court. I
19 believe punitive damages in the amount of \$100,000 would be sufficient to deter plaintiff from
20 engaging in such fraudulent conduct in the future.

21 19. The damages I suffered at the hands of defendant resulted from defendant's
22 fraudulent conduct in inducing me to accept the note and deed of trust, when defendant had no
23 intention of making payment under the note.

24 20. My damages also resulted from defendant's fraudulent conduct in assuring me
25 that his property and the properties of his partners stood as valid security for the note given,
26 when none of the properties was viable security for the promises contained in the note.

27 21. My damages also resulted from defendant's fraudulent conduct in representing to
28 me that the note and deed of trust had been properly executed by all three individual signers.

1 Defendant Wahab delivered the note and deed of trust to me with the representation that each
2 had been properly executed. The presence of the notary stamp was included in an effort to
3 induce me to believe they had been properly executed. However, at least one of defendant
4 Wahab's partners, Mustafa Akbar, declared in sworn discovery responses that his signatures on
5 the note and deed of trust were forged. Defendant Wahab made these fraudulent
6 representations without reasonable grounds for believing them to be true. Further, the note and
7 deed of trust are alleged to be materially false in that they contained forged or falsified
8 signatures of Akbar. (See **Exhibit J**; see also **Exhibit L**, the deed of trust purportedly signed by
9 Akbar, for comparison of signatures.) Defendant Wahab knew at the time he returned the
10 documents to me that they had not been fully executed or properly notarized, and he provided
11 the same to me with the intent to deceive me.

12 22. Defendant's fraudulent and deceitful conduct is not subject to discharge under
13 Section 523(a)(2)(A), Section 523(a)(2)(B) and 523(a)(6) of the Bankruptcy Code.

14 23. I request that judgment be entered in my favor against defendant Javed Wahab,
15 as follows:

16 Principal amount owed on note:	\$225,000.00
17 Interest (10% per annum) from 1/1/06-10/21/08:	63,123.29
18 Attorneys' Fees:	80,575.35
19 Court Costs (State Court and Bankruptcy Court)	5,437.58
20 Punitive Damages:	<u>100,000.00</u>
21 TOTAL JUDGMENT REQUESTED:	\$474,136.22

22
23 Respectfully submitted,

24
25 Dated: October 21, 2008

26
27
28

Howard B. Allan

1 **COURT SERVICE LIST**

2
3 No recipients.